2;Evans-Pritchard E-5 (1931, 1936) 1951
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MARRIAGE

Intercourse does not necessarily take place when a youth and maid are alone together on the night of a dance. When the relationship between them is a *luom buol*, a dance love affair, or *luom thura*, a dancing-ground love affair, a more or less constant attachment, and not a *luom goka*, a love affair of the high grasses, casual lust, I was told that the girl is likely to refuse her favours, though he will entreat for them, unless she feels sure that he intends to marry her and has the cattle with which to do so, for no respectable girl wants to be a *keagh*, an unmarried mother. No attempt is made to conceal an attachment of this kind, which indeed imposes on the girl modesty and shyness towards her lover in the presence of other persons such as a bride is expected to show towards her bridegroom or a newly-wed towards her husband.

Parents are not cognizant of all the love affairs of their children, but if a girl forms a constant attachment she may tell her mother about it, and a father will probably hear of a similar attachment of his son. They are not likely to say anything unless there is danger of incest. All the young men of a hamlet or small village, who are kinsmen and dance together, know of one another's courtships and escapades. Likewise, all the girls know about one another's lovers and amours, for they also keep together at dances. The only person who may interfere is a brother in an affair of his sister, for her virtue is his responsibility, but he will only do so in certain circumstances. He keeps an eye on his sister and knows who is courting her, but he will only come between her and her lover if he suspects that she is having regular relations with a man without cattle or that she is giving herself to all and sundry.

It not infrequently happens that a girl becomes pregnant while still unmarried. If the young man has cattle he will be expected to marry her, and if she is not a profligate he will be glad to do so. If he has insufficient cattle he cannot do so, and though another man will not object to taking her as a wife, he is more likely to take her as a second wife than as a first wife, and he will pay fewer cattle for her bridewealth. It is therefore in the brother's interest to see that this does not happen. It is also in his interest to prevent his sister from becoming a wanton. A man does not expect his bride to be a virgin, but he does not care to marry a jade. A girl of easy virtue may find plenty of lovers but no suitors, and after bearing an illegitimate child is likely to become a concubine for the rest of her life, to the detriment of her family herd.

2;Evans-Pritchard E-S (1931, 1936) 1951
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from whose back cattle have been returned.' Either the cattle paid for her have been sent back to her husband's people or she was not at any time married with cattle. These concubines often spend a few years with one lover and then a few years with another. They move from village to village, taking their infants with them. I found unmarried mothers in every Nuer village where I made inquiries; and I have known an unmarried concubine bear eight children by as many as seven different men.

Those unmarried concubines whom I have known personally have been women of strong character who valued their independence and did not desire matrimony. Nuer recognize that they are temperamentally unfit for normal married life and are unlikely to settle down till they are old. Their behaviour is not stigmatized as immoral, but they are not so highly esteemed as wives and in a quarrel their children may suffer the reproach of bastardy. Also, an unmarried concubine cannot expect the same support from her kinsmen in domestic disputes as a wife can expect. What a wife can demand as a right, a concubine can only ask as a privilege. It does not follow that a man treats a concubine differently to a wife, and one cannot know in a household who is wife and who is concubine by bare observation of behaviour. Indeed, a man may treat a concubine with more consideration than a wife, for he has only what control over her his personal influence gives him. He cannot claim compensation should she be unfaithful to him, and he cannot restrain her should she wish to leave him for a new lover.

He has, however, undisputed right to legitimatize any children she may bear him by paying for each child a fee of from four to six head of cattle to her parents—they are not divided among the kin. This fee (*ruok*) is not bridewealth. It gives him no rights in the woman nor in any further children she may bear to him or to other men. Children born of a concubine by different men become in consequence members of different lineages. If a concubine leaves one lover to live with another she takes her small children by the first with her to the second, but they will eventually be claimed by the man who by payment of cattle is their pater. By payment of a fee the genitor becomes the pater also.

It is, of course, possible for a man to legitimatize his union with a concubine by payment of bridewealth, but though he will almost invariably legitimatize his children, he is seldom eager to marry their mother, because experience has taught Nuer that a woman

5 Evans-Pritchard E-5 (1931, 1936) 1947
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583 431 One of the earliest British officers in Nuerland wrote that "the system of marriage among the Nuers is the cause of nearly all their quarrels and troubles".[1] Everyone concerned with the marriage stands to lose by its dissolution and they will try to prevent divorce.

586 431 Nevertheless, it can only be accepted that payment of bridewealth stabilizes marriage to a very limited degree. That this is so can best be understood by considering the question in relation to what happens at divorce.

The marriage tie is severed (*dak*) by the return of the bridewealth because either the wife has died childless or her husband's people give up their rights in her. In either case, if there are no children, all the cattle have to be returned (except the *yang miemde* and the *yang yuni*, the cow (ox) of the hair and the cow of the skirt[2] unless they have died a natural death in the homesteads of the recipients. If the wife dies after bearing a single living child the usual procedure is for the extra-family kinsmen to return their portions of the bridewealth and for the family of the wife to retain their portions, the child remaining with his father. In this case one cannot speak of divorce. The wife and mother has become a ghost. If the wife leaves her husband after the birth of their first-born his kin may decide to claim the return of their bridewealth except for six head of cattle which the husband leaves with his wife's people to retain his rights in the child (*rusk*). These six beasts, including the two of the hair and the skirt, are kept by the family of the wife. The extra-family kinsmen lose their portions of the bridewealth. The wife by this procedure is 586 431 divorced and can remarry. On the other hand they may leave all their cattle with the wife's family

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[1] Bimbashi H. Gordon, *Sudan Intelligence Reports*, June, 1913, No. 107.

[2] According to my own information these two animals are retained by the bride's parents should the marriage be broken up after the consummation ceremony and are regarded in some part as payment for loss of the bride's maidenhood at the consummation and in some part as compensation for the expenses of the nuptial ceremonies. Mr. Jackson (*Sudan Notes and Records*, vol. VI, 1923, p. 155) says that they are left with the parents only if the husband is responsible for the dissolution of the mariage. Mr. P. P. Howell tells me that he is of the same opinion as Mr. Jackson.

[p. 182b]

586 431 848 and kin and maintain thereby their rights in any children she may 'bear in the bush' (*dieth dar*), that is by lovers. She is then not divorced, but is only separated from her husband, and she cannot remarry.

If a wife dies after having borne two children no cattle are returned, it being held that "Cattle which have children on their backs cannot be returned".[1] Should a wife leave her husband after having borne two children the cattle will remain with her kinsmen and any children she may bear by other men will be claimed by her husband's people. She is still married to him though she lives as concubine to another man. The husband's people are said to be generally content with this arrangement but, whether content or not, it would be useless for them to reclaim their cattle and the progeny of these cattle and deduct the total cattle to legitimatise each child. The wife's people would say to them: "You have your children. You keep them and we will keep the cattle. Let your wife bear you children in the bush."

586 431 The rules stated above are principles which are flexibly applied in actual cases according to the circumstances of each case. Much depends on the personal relations between the husband's people and the wife's people. If they are bad and his wife has left him at their instigation the husband will claim back everything to which he has a right: cattle,[2] sheep, goats, spears, tobacco, millet, and ornaments, including his wife's *yeak* or bead-decorated skirt. But if they are good and she has left her husband against her parents' wishes he will not ask for the return of the smaller gifts and the *panth mamkude*, the little gifts with which he honoured his mother-in-law, and if she dies childless he may also leave some of the cattle to which he has a right

[1] I did not record a case of a wife dying after all of her several children had predeceased her in infancy, and Nuer merely told me, in reply to my queries about rights to the cattle should this happen, that it was most unlikely to happen. Whether the cattle or how many of them would be returned would probably depend on the age at which the children had died.

[2] When possible the identical cattle are returned but if they are dead or it is difficult to recover them after dispersal others may be substituted for them and if they are of the same quality as those paid by the husband's kin they must accept them.

[p. 183a]

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her husband is before the court and before he has met their claims for bridewealth, in which case strictly speaking the man is not her husband at all.

7. THE LEGITIMACY OF CHILDREN

Establishment of Legitimacy by Legal Marriage

Legal marriage is performed by the transfer of a number of cattle acceptable to the woman's family, and usually also by the performance of ceremonies and ritual observance. Children born of such unions are legally the children of the man who transferred the cattle or on whose behalf the cattle were transferred, and his rights in those children, and the rights which descend to his heirs, are valid and inalienable unless the cattle are returned. No conflict can theoretically arise, for a woman cannot have more than one legal husband at one time. Nor can any one of her children have more than one legal father or *pater*, though sometimes different children of the same mother may have different legal fathers. From the legal aspect, legitimacy brings to male children status and privilege as members of the legal father's lineage and the rights of inheritance from that father. They acquire rights in the cattle of the kinship group—rights which are determined by their position in the kinship structure; rights to cattle inherited and to cattle brought in by the marriages of females of that lineage. Female children provide a means by which cattle will be acquired by the lineage in the future on the normal principles of distribution of bridewealth (*ghok kuɔ̈ɔ̈ gwandɛ*), and they further stand as a legal link between the lineages of the father and the mother, for the mother's relatives may also claim cattle from their bridewealth (*ghok kuɔ̈ɔ̈ mandɛ*).

Thus the children of a simple legal marriage will belong to the legal husband by whomsoever begotten (for they may be begotten in adultery—which does not affect the legality of the marriage). In 'ghost-marriage' children are attached to the name of the man on whose behalf the marriage was performed, although in other respects their relationship to their physiological father (*genitor*) is normally the same as that found in simple legal marriage. The *genitor* is usually the principal heir to the *pater* by reason of the fact that he performed the ceremonies on the father's behalf, and also through normal rules of inheritance derived from their relative positions in the kinship structure of their lineage. It is probable that the children will be brought up in their *genitor's* household, and he is therefore also their foster-father. He may die, however, and his position will be assumed by his own heir.

Similarly, in leviratic union or 'widow-concubinage' the status of the children is determined from that of their legal father, although he is dead. Their physiological father will have authority over them and rights in them derived from his relationship to their

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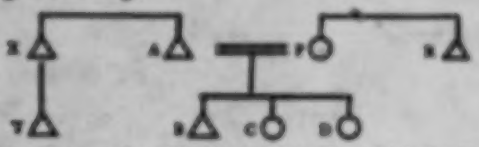
legal father, although, as we have seen, as *genitor* and foster-father he may acquire certain personal rights to cattle subsequently paid as bridewealth for daughters. These rights in bridewealth cattle, which are not in any case substantial, may be acquired whatever the circumstances, but it is clear that the greater the degree of coincidence in one man as heir to the *pater*, as *genitor*, and as foster-father, the closer the relationship between him and the children and the greater the rights he will hold. If there is a high degree of coincidence there will be no great need for an exact definition of rights.

In these circumstances the legitimacy of children in respect to the acquisition and inheritance of rights is clear. The law is logical and can always be carried to logical conclusions even though there is often a conflict in fact. It is obvious that there is an infinite variety of possible situations depending on the relationships within the kinship structure of the lineage of the persons concerned and the functions performed by persons outside the lineage as *genitor* or foster-father. For the purpose of illustration a number of such situations are recorded.

In Simple Legal Marriage



A married P by the transfer of bridewealth to R and his family.

(i) If all the persons recorded above are living, A, who is the legal father of B, C, and D, will be the link through whom their relationship to other members of A's family and lineage is traced, and A will be the point from which the distribution of the bridewealth of C and D will be determined.

(ii) If A is dead, the point of determination will be the same, but X, A's brother or, if dead, his son Y, will represent A, unless by that time B, A's son, has come of age.

(iii) It will probably be X (though it may be another brother or some more distant agnatic kinsman) who brings up A's children and will stand in the relationship of foster-father to B, C, and D, and as he is also A's heir until B grows up, he will perform most of the tasks of *pater*.

In 'Ghost-Marriage'

X married P on behalf of his brother A.

(i) Three children, B, C, and D, are born of this union. In this case A is legal father (*pater*) of the children and X is the *genitor*, but since X is also brother of A he will represent him as *pater*, and the distinction is not stressed.

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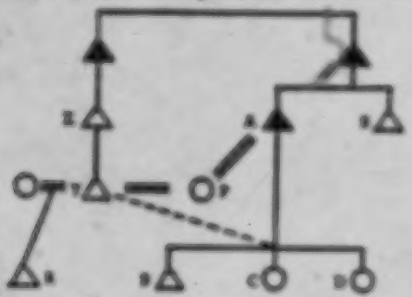
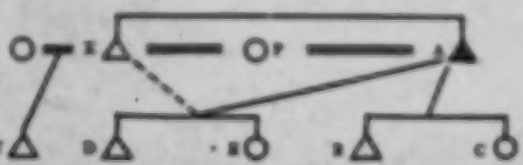
(ii) Hence in all matters concerning kinship obligations and inheritance, particularly in the matter of the bridewealth of C and D, A is the first point of determination in the kinship structure, and X, as his uterine brother and legal heir, comes next. X may expect the *pater's* portion of the bridewealth, a portion which may be inherited by his son Y, though in some cases—depending on their relative ages—B may inherit these as well as claiming the brother's portion.

The position may not be so simple as this. For example:



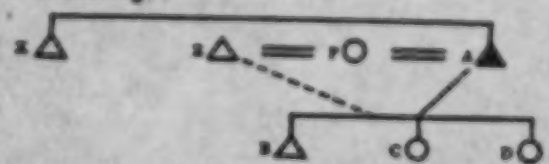
Y, one of A's less closely related kinsmen, marries P on behalf of A with cattle which he has inherited from A. Y is both *genitor* and foster-father of the children B, C, and D, and as heir to A he can claim many of the privileges of *pater*. He would normally claim the *ghok gwandu*, the father's portion, on the marriages of C and D, though this will depend partly on the configuration of the lineage, since B or his heirs may have counter claims, but normally they could only claim the *ghok gwonion*, the paternal uncle's portion.

In Levirate Union



A marries P. She gives birth to B and C of whom A is both *genitor* and *pater*. A dies and P goes to live with A's brother X, who begets D and E. A remains *pater* of all these children, and they will all call themselves by his name. X is naturally foster-father of B and C and he is *genitor* of D and E. He is also *pater* to all four in the sense that he represents their interests and is legal heir to A, though here the future claims of A's sons will have greater emphasis than in 'ghost-marriage'.

In 'Widow-Concubinage'



A marries P but dies before any children are born. P goes to live with Z, a relationship which is recognized by X, who is heir to A. Z is the *lover*

8:Howell E, G-5 (1942-1944)1954
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or lover of P and has received the formal recognition of her late husband's kinsmen. Three children are born, B, C, and D. All these remain legally the children of A, and their rights are determined from his position in the kinship structure, but X, as heir to A, performs all the duties of *pater*. Z is merely *genitor* and in this case foster-father. On the marriage of C and D, he cannot claim the father's (*gwan*) portion, but he may expect to receive *yang leta*, which in this case may amount to two or three head of cattle since the union is a stable and agreed one. In such cases Z might be the *genitor* only while X brings the children up in his home.

The variety of circumstances in the examples given above is considerable, but all situations are not covered. The legal and sociological relationships of the members of a Nuer family are often a complicated matter. The family preserves the outward appearance of a simple legal union, and in day-to-day affairs the differences are not stressed. Analysis will, however, often reveal a complicated pattern and a variety of legal relationships which are relevant in the distribution of bridewealth and inheritance.

The system may appear complex and sometimes confusing. It is not so to the Nuer themselves and, in a court session, even if the court members are not already aware of the relationships involved, a few introductory remarks and a few pertinent questions will give them a clear picture of the legal aspect of the case before them.

Disputes sometimes arise over inheritance and the obligations of kinsmen in the collection of bridewealth on behalf of others. Clearly in such cases the legality of an individual's position within the framework of the lineage is relevant. Sometimes the *pater* himself, or more often his heirs, refuse to recognize the claims of a legal son who has been brought up in the home of the *genitor*. Sometimes the *genitor* acquires cattle on behalf of his natural son and holds them in trust. At a later date he or his heirs may refuse to hand them over, which amounts to a breach of trust. Such disputes are not frequent, and in the past were usually settled because public opinion will always press for the fulfilment of kinship obligations based on legitimate relationships. The courts are now often called upon to intervene.

The Position of Children born of Unmarried Concubines

Children born out of legal wedlock are illegitimate,[1] and strictly speaking should be linked to the lineage of their mother's father. Sometimes their *genitor* will choose to legalize their position by marrying their mother with cattle, and usually her family will press him to do so, particularly if she is not *keagh*, in the sense of a woman who is unable to remain long with one husband, or has been married before

[1] I am aware that the use of the term 'illegitimate' may be challenged. Children born in wedlock are *legitimately* the offspring of their mother's legal husband; children born of an unmarried woman are *legitimately* linked to their mother's lineage.

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and divorced. There is no moral stigma attached to illegitimate children, though the instability of their position may in later life put upon them psychological strains and cause emotional conflicts. A man who is linked to a lineage through his mother will have to compete with the legitimate members of that lineage, and, since his mother may not have brought bridewealth cattle to the family, he may be poorly treated by them. He will sometimes find it difficult to collect sufficient cattle to marry a wife though this is not by any means always so.

The *genitor* may also legitimize his offspring by payment of *ruok gaanke* (or *ruok muor*). This is a legitimization fee, and in no sense a marriage, for it does not carry with it any rights in the mother of the child, but only in the child itself.[1] It is further a more individual transaction between the *genitor* and the woman's immediate kinsmen, her father or brothers. If the woman is subsequently married to another man by transference of bridewealth, even if the number of cattle accepted by her kinsmen is less than normal, a conflict may arise between the legal father of her first child, who has acquired this position by the payment of *ruok gaanke*, and her legal husband, who has married her with bridewealth. Legal marriage usually implies legal paternity of all the children of the wife, whether born immediately[2] before or after the marriage. Hence, the legal husband will often insist on the return of the *ruok* cattle from the woman's family to the *genitor*; otherwise the first child would in one context be the legal son of the man who paid the *ruok*, in another the legal son of its mother's husband. This is a confusion of legal status and is not proper. Nuer would say that the cattle of the *genitor* of a child, especially in cases of adultery, and those of the legal husband cannot meet in one herd. It is a situation which may not only cause legal difficulties in the future, especially in the matter of inheritance of posthumous rights, but also bring upon those concerned the disapproval of the ancestral spirits. This will lead to sickness and misfortune. Yet the woman may continue to move from one man to another, living with each for a short period and bearing children to some or all of them. If each legitimizes his child or children, it is possible for her to be the mother of several children each of which has a different legal father. Thus, though it is possible for the children of one mother to have different physiological fathers, it is not possible for one child to have more than one legal father. I quote one case by way of illustration taken from court records.

[1] A position similar to that of a husband who divorces his wife but allows her family sufficient cattle to legitimize the children (see pp. 134, 139).

[2] I.e. children in arms, but not older children. The point is controversial, and there does not seem to be any set agreement. If the child is weaned before the new marriage takes place it will probably not go to its mother's new husband. If it is born within a month or two before or after the marriage it will almost certainly be accepted as a child of the new husband.

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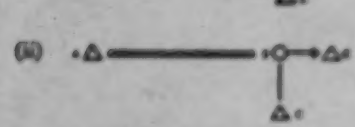
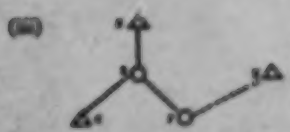
A married B. She gave birth to a son, C, but then deserted her husband and went to live with X. A's marriage to B was then dissolved by order of the court. While living with X, B gave birth to another child, this time a daughter F. B's family strongly objected to X, who had made no attempt to produce bridewealth to legalize the union, and, through the intervention of the court, he was made to leave her. Later he was prevailed upon to pay *ruok gaandu* to retain legal parenthood of his natural daughter F. B returned home, but was later married by T, who agreed to hand over a much reduced bridewealth, all that her family could expect in the circumstances. Her former husband had forgone all claims on C, but, on B's remarriage, T claimed that all the children should be his. X was persuaded to accept return of the cattle he had paid as *ruok gaandu*. The two children, and those born subsequently, were then regarded as T's. This complicated situation was reached in four stages, the final stage being a permanent one and, unless further difficulties arise, it will remain legally valid in the future.

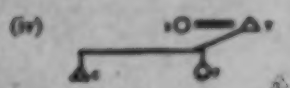
A married B by payment of bridewealth and is therefore legal father of C.



X seduces B, who goes to live with him. A dissolves the union and forgoes all rights in C.



F is born and would normally belong legally to her mother's lineage, *i.e.* through Z, but X pays *ruok gaandu* and becomes her legal father. X then leaves B.



B returns home and is eventually married to T (who in this case paid only seven head of cattle for her). X's *ruok* cattle are returned to him and T claims legal parenthood of F. T also claims that he is legal father of C.

In this particular instance the mother's position is constant, for the legitimacy of the children is not traced through her except in stage (iii) in respect of F but not of C. The position of the *pater* has changed throughout. In future, when C and F have reached maturity, their position will be determined by the final picture shown in stage (iv). C will call himself son of T, though he might—as is often the case—revolt and link himself to his physiological father A. T's lineage will have undisputed claim to the father's portion of F's bridewealth, the *ghok kui guandu*, while B's family will claim the *ghok kui mandu*, a claim which cannot be altered whatever the circumstances.

The Position of Children born of Adultery

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By definition adultery cannot happen unless the woman concerned is legally married, in which case all her children, whoever the *genitor*, belong to her legal husband. He is always *pater* so long as the union remains legally valid. An adulterer cannot under any circumstances

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848 legitimize his child by the payment of *ruak gaanke* while the marriage
684 stands. A child cannot have two legal fathers at one time. It is for this reason that when an adulterer has been prevailed upon, or compelled by a court, to pay full compensation to the woman's legal husband—*ruak ciek* (not more, but sometimes less, than six head of cattle)—if a child is born and attributed to the act of adultery, all those cattle must be returned except *yang kade*,[1] which is not part of the indemnity but has special ritual significance. Unless this is done there may be confusion over the true legal father of the child: a confusion of *ruak ciek*, which is paid as compensation to the husband, and *ruak gaanke*, which should be paid to the woman's family to legitimize the child. In fact, there is not necessarily any confusion, because the compensation (*ruak ciek*) goes to the legal husband as damages, while *ruak gaanke* as a legitimization fee *should* go to the woman's family. A confusion may arise in the future, however, especially if there is a divorce, and usually a wronged husband will return the cattle without argument. This rule applies in all tribes west of the Nile, among the Zeraf tribes, and in Lou, but is not followed in Eastern Jikany.[2] We shall consider this matter again in connexion with divorce and adultery.

The Position of Children on Dissolution of Marriage

848 As will be seen later, if a legal union is dissolved the husband may
586 retain legal parenthood of any children born prior to dissolution by leaving sufficient cattle as legitimization fees with his wife's family.[3]

Legitimization Fees: Recent Legislation

848 Fees payable for this purpose have varied considerably from one Nuer tribe to another. At the Chiefs' meeting of 1945, they were standardized as follows:

for a male child 5 head of cattle
for a female child 6 head of cattle.

Chiefs said that the fee payable for a girl should be higher than that for a boy because in the case of a girl the mother's family could expect to benefit materially on her marriage.

If a man declares his intention of legitimizing the child at once, he will not be expected to pay more than the five or six head of cattle, as the case may be. If, however, he disowns the child or declares that he will have nothing to do with it, he will have to pay a higher

[1] See also under Adultery (p. 156).
[2] See recent legislation on this subject, pp. 166–8.
[3] See under Dissolution of Marriage, p. 149.

8:Howell E, G-5 (1942-1944)1954
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rate—up to ten head of cattle—if he wishes to legitimize it later. Chiefs said that he had a right to do so even if the girl's family objected, provided the woman had not been legally married to someone else in the meantime.

If a man pays legitimization fees and the child subsequently dies at an early age, all his cattle must be returned to him except a bull-calf and a cow-calf: in other words, the normal compensation for seduction of the girl, *ruak nyal*,[1] when no child is born as a result.[2]

8. CONCLUSION

The complexities of Nuer marriage and other forms of procreative union may appear chaotic. At first sight the relations of the sexes may even seem to be indiscriminate in the extreme. This is not so, and to the Nuer themselves there is rarely any confusion at all. The terminology which describes special relationships, special circumstances in marriage and descent, besides the normal terminology of kinship, is sufficient to place any man in his correct status both within his patrilineal descent group and in Nuer society as a whole. This status is determined from the status of the *pater*, and the basis of all marital relations lies in the relatively stable position of the *pater*. It is true that the *pater* is sometimes changed, but not without the passage of cattle from one group to another, an event which stamps the change indelibly in the minds of the people concerned. This legal principle runs through the whole structure of Nuer society because it is the basis of the lineage organization upon which other and larger units of society are built. A Nuer finds his position in the lineage through his legal father or *pater* and from no one else, and, as a member of his father's lineage, can ultimately be placed in correct relationship to the members of other lineages within his tribal segment and through them to the tribe. He is a member of a patrilineal descent group (*thok dwiel*), and that group has a recognized position in the community, which is composed of similar lineages. He has through his *pater* a position in the lineage which provides the means for social, economic and political security.

There is adequate literature on this subject, and it is not the purpose of this book to enter into the details of the structure of Nuer society. It must be emphasized again, however, that a full understanding of Nuer law, both the customary law operated by sanctions prevailing in the past and the law now operated by the courts when those sanctions tend to fail, is impossible without a full understanding of the political and social organization of the Nuer. Law is after all only a feature of that organization as well as a means through which the

[1] See under Violation of Rights in Women, Chapter IV, Section 2.
[2] Extracts from minutes of Nuer Chiefs' Council, 1945.

8:Howell E, G-5 (1942-1944)1954
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PART I

DIVORCE LAWS AND THE DISSOLUTION OF MARRIAGE

We have seen that marriage is achieved by the performance of social and ritual ceremonies and the transfer of cattle to the kinsmen of the bride. It is now necessary to examine the reverse process by which a union is dissolved. This involves no public ceremonies or ritual, but only the return of bridewealth cattle, with various deductions in respect of rights received and, in the case of children, rights retained by the husband. A distinction must be made between active divorce in which both parties are living at the time of the proceedings, and dissolution of marriage which sometimes follows the death of the wife, though not the death of the husband. There is no distinction in terminology; both transactions are *dak kuen*, 'the breaking of marriage', and the same general principles apply, but the details vary.

1. DISSOLUTION OF MARRIAGE ON DEATH OF THE WIFE

The death of his wife is usually considered to give the husband some right to claim the return of his cattle, although he will not always exercise that right. It will depend on a variety of circumstances. If the union has lasted a long time and the husband is on good terms with his wife's family, he may not wish to sever his connexion with them, though he will usually demand return of the bridewealth cattle if she has borne him no children at all. Her family will not necessarily dispute the case, and often wish to assist him. There is after all a human element in Nuer marriage which a coldly analytical approach tends to ignore. The birth of one or two children will alter the situation substantially. The father will in any case usually leave sufficient cattle to retain legal parenthood over them. The number of cattle varied in the past from tribe to tribe and, in some tribes, according to the sex of the children, but for two children a man will have to leave at least ten head of cattle (legitimization fees have now been standardized at five head for a boy and six for a girl),[1] and, after deduction of these, in some marriages there will not be many cattle left to return. Nowadays many Nuer get married with as little as twelve or fifteen head of cattle, and if some of them have died in the possession of the wife's family they will not be returnable. In other marriages a larger number of cattle may have been transferred, and

[1] See under Legitimacy of Children, pp. 128–35.

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their progeny may be considerable. There is no hard and fast rule, nor any convention which governs the attitude taken by the husband. At the same time his rights in such circumstances are usually clear, and nowadays a Nuer court will tend to uphold those rights even though they will nearly always attempt to find a compromise.

In fact disputes over the return of cattle when the wife has died are rare because relations between a husband and his wife's kinsmen are not strained, as they must necessarily be in a case of divorce where both husband and wife are living. No generalization is safe on this subject beyond saying that when the wife dies without issue the husband is likely to demand and receive without undue argument all his cattle; that if one child is born the wife's family will retain sufficient only to legitimize that child; and if two children are born the husband may be content to leave all his bridewealth cattle with the wife's family or may demand the remainder after deduction of legitimization fees. A Nuer court will sometimes allow the latter, sometimes not. If more than two children have been born the return of bridewealth is regarded as impossible. It is then considered that the wife has performed her obligations in this respect in full. It must be remembered that the birth of children is also an indication of the time factor and, generally speaking, the longer a union has lasted the less likely is it to be broken. I quote here four actual cases, taken from a large number of similar ones, which indicate both the principles and the tendency to follow them:

(*a*) *Majok Deppyang* v. *Cah Macnat* (*Dok Nuer Case*)

Liah Macnat (brother of Cah) married Majok's daughter. The woman died leaving one male child. Liah then began to claim return of his cattle but died before negotiations were completed. Cah continued this claim as Liah's heir and further demanded return of all cattle and stated that he did not wish to legitimize the child. Chiefs' court ruled that all cattle should be returned with the exception of five head for the boy (*ruak nuer*).

(*b*) *Carok Jyath* v. *Won Teang* (*Dok Nuer Case*)

Carok married Won's daughter, who died after bearing two children. Court ruled that Carok should receive all cattle paid by him after deductions had been made for the children.

(*c*) *Kwic Thoath* v. *Ngotkek Deng* (*Bul Nuer Case*)

Kwic married Ngotkek's brother's daughter. After bearing him three children she died, and Kwic demanded return of his cattle after legitimization fees had been deducted. Court ruled that the woman had fulfilled her obligations and that Kwic had no right to any cattle. Court, however, stated that Ngotkek should assist by payment of *ghak tuohe*.[1] This judgement was confirmed on appeal.

(*d*) *Cuol Dak* v. *Liep Balou* (*Dok Nuer Case*)

Liep married Cuol's daughter who died after bearing him four children. Liep subsequently claimed return of his cattle after deductions for the children

[1] *Ghak* (*yang*) *tuohe*. The significance of this payment is explained later.

8:Howell E, G-5 (1942-1944)1954
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had been assumed. Court ruled that no dissolution of marriage was possible, but ordered Cuol to give Liep a cow (*yang tuoke*) 'for his sister's sons'. This judgement was confirmed on appeal.

These cases are not unusual, and similar disputes and judgements may be found in any court case book. They provide illustrations of the principle that on the death of a wife who has borne one, and in some instances, two, children, the husband may expect the return of all his cattle with the exception of sufficient for him to retain legal parenthood of those children. If, however, the wife has borne three or more children she is considered to have fulfilled her obligations, and there is no claim on her family at all, though they may be expected to assist her husband by payment of what the Nuer refer to as *yang tuoke*. This privilege sometimes extends to the husband's heirs, if he too is dead, should a cow or cows be required for milk for the children. The distinction is clear. In the first instance the union is dissolved and no longer exists, even though the children continue legitimate and therefore legally members of their father's lineage with all the privileges which that entails. In the second instance there is no dissolution at all, but the wife's kinsmen are expected to assist her widower, either to get married again or at least to bring up the children.

Ghok tuoke

Yang or *ghok tuoke* means literally 'the cow or cows of the cooking pot', and in this sense refers to the loss of the domestic assistance a husband should receive from his wife. It is also sometimes referred to as *ghok piche guat*,[1] or 'the cattle of bringing up the children'. There is therefore contained in the idea the necessity both of compensating a widower for this loss of domestic assets, and of providing him with cattle for the subsistence of the children of the union. The number of cattle which may be claimed varies considerably from tribe to tribe. Among the Lak only one cow at most is paid, while some tribes give as an ideal at least six head of cattle. The Leik, who are comparatively rich in cattle, give eight as the accepted number, and state a definite form of distribution among the dead woman's relatives upon whom the obligation falls. The brother and half-brother of the wife (*deman kui mande* and *deman kui gwande*) should each pay a cow; her father's uterine brother (*gwanlen mande*) and father's half-brother (*gwanlen gwande*) should each pay a cow; likewise her father's sister (*wac*) and mother's sister (*manlen*), her mother's brother and half-brother (*nar mande* and *nar gwande*) should each pay a cow.[2]

The payment of *ghok tuoke* is not always honoured, but it is a

[1] Here used in a different context from those claimed outside marriage (see pp. 111–2).

[2] In other words, an equitable distribution among the kinsmen of the wife, both paternal and maternal, who have already received a portion of the bridewealth according to the pattern of distribution.

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684 837 Despite this general attitude to physical paternity, and despite the fact that birth out of wedlock is in no sense ignominious, a Nuer who is in full possession of his physical powers will bitterly resent an intrusion, and adultery is reckoned a serious infringement of a husband's rights. A husband will take violent steps to prevent it, and it is commonly recognized that a man caught in adultery runs a risk of serious injury or even death at the hands of the woman's husband. There are not, however, nowadays many instances of physical violence or injury arising from adultery (as among some Sudan tribes), and the injured husband will usually resort to the courts.

Adultery is a wrong which demands indemnification in the form of cattle, and this is nearly always enforced by the courts unless circumstances are considered to mitigate the offence. The compensation for adultery[1] (*ruok ciek*) is six head of cattle, and this is common to all Nuer tribes. Of these, five are considered to be direct compensation for the injury caused to the husband, and the sixth, *yang kule*, 'the cow of the sleeping-skin', has a ritual significance. It is considered dangerous for a man to sleep with his wife after she has had intercourse with another man. She is in a state of impurity, and a return to conjugal relations will bring misfortune to them both unless expiation is made by the guilty party. The *kul* or sleeping-skin is symbolic of conjugal relations.

Cattle Returnable if a Child is born of the act of Adultery

684 848 The majority of Nuer tribes west of the Nile, the Zeraf tribes and Lou (but not Eastern Jikany), consider that if a child is born of an adulterous union, then all cattle paid previously as compensation must be returned by the husband with the exception of *yang kule*. The reason is not far to seek if we consider the logical principles which underline the concept of legal parenthood already described.[2] It is not so much because the adulterer is considered to have done the husband a service in begetting a child on his behalf—although I have often heard Nuer give this as the reason for the return of the cattle—but because the five head of cattle paid as compensation (*ruok ciek*) have the flavour of legitimization fees (*ruok gaanke*). Unless they are returned there may be confusion of legal concepts. Subsequently, and especially if the marriage was dissolved, the adulterer might claim the child as his legal right.[3]

[1] *Dhu*, lit. 'fornication with'. *dhu ciek* therefore means adultery, while if a child is born of the act, it will be called *ruet ciek*. *Ruok ciek*, or more precisely *ruok dhu ciek* or *ruok ruet ciek*, means compensation for adultery.

[2] See Legitimacy of Children, pp. 128–35.

[3] Nuer say that the cattle and the child must not be in the same place together—'they may not meet'. Moreover, the aggrieved husband will always get rid of these cattle as soon as possible even if a child is not born. In the interim between acceptance and their ultimate disposal he will keep them with a friend and well apart from his

8:Howell E, G-5 (1942-1944)1954
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Deng Kac v. *Nyuon Makwac* (*Gaawar Nuer Case*, 1943)

Nyuon Makwac committed adultery with the wife of Deng Kac. Before the court he admitted his guilt and was ordered to pay six head of cattle. Some eighteen months later, when pressed for execution of the judgement, since he had only paid three cattle, he appealed because Deng's wife had in the interim borne a child, and stated that on these grounds he not only refused to pay the remaining cattle but demanded the return of two head leaving only *yang kule*, for this was the law. Evidence was produced, principally on the admission of the woman, that Nyuon was physiological father of the child. Deng Kac was therefore ordered to return two head of cattle to Nyuon, leaving only one cow as *yang kule*.

This is a simple and typical case, which illustrates the rule that only *yang kule* is due if a child is born as a result of the act of adultery.

Not Pet v. *Gac Nyol* (*Thiang Nuer Case*, 1944)

Gac Nyol committed adultery with the wife of Not Pet. Not instituted a legal case against Gac before the Thiang court. The accusation was admitted and Gac ordered to pay six head of cattle as *ruok ciek*. Subsequently the woman gave birth to a child, and Gac appealed for the return of five of the cattle on the grounds that the child was his. Court examined the evidence and ruled that the child was born too long after the act of adultery for Gac to be physiological father. Appeal dismissed.

This raises a point which is of some difficulty to the Nuer. What constitutes proof of physical paternity? There may of course be evidence that the husband was away at the time, and it is in the interests of the adulterer, at this point in the proceedings, to admit access to the woman because he is seeking the return of the cattle. The time element is also of importance and possibly presents a difficulty, but the Nuer are nowadays better able to assess time than they were in the past. Reference can be made to court sittings, inter-tribal meetings, tribute collection, as well as to the seasons. In most cases the evidence of the woman is given weighty consideration.

Legality of Marriage is a Fundamental Consideration

The legality of marriage is also a primary consideration. We have seen that the legality of marriage is established by the payment of cattle and the performance of ceremonies. A man clearly cannot claim damages for adultery with a woman who is not his legal wife, even if he cohabits with her.

Kwol Biliu v. *Cuol Puot* (*Lak Nuer Case*)

Kwol Biliu (a government policeman) claimed damages from Cuol Puot for adultery with his wife. Act of adultery was admitted, but Cuol pleaded

own herd. An emotional tie always exists between a *genitor* and his natural child and, I think, Nuer do not wish to give legal emphasis to this by the transference of cattle. As we have seen, even in adultery this tie is recognized, for the physical father may claim a cow on the marriage of his daughter: the *yang leta* or 'cow of the loins'.

8:Howell E, G-5 (1942-1944)1954
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and its consequences which he runs in resuming sexual relations with his wife. *Yang kule* is both indemnification and spiritual expiation.

(ii) If a child is born of the act of adultery, the five head of cattle must be returned to the adulterer to avoid any possibility of confusion over the legal paternity of that child, but *yang kule* must always remain with the husband.[1]

Application of these Principles depends on Circumstances

Adultery is therefore an offence because it amounts to an infringement of the legal husband's physical rights in his wife, and also a wrong against the ritual status of the husband which may be impaired by his wife's impurity. This is the law, although its application will depend on a variety of circumstances: the physical condition of the husband and of the wife; the morals of the wife and the age of the wife; the position in the social structure of the parties concerned.

Impotence of the Husband

The physical potency of the husband is sometimes questioned by the defendant, and if the point is proved, the court will rarely enforce the payment of compensation or even of *yang kule*. A man's physical rights in his wife will not be guarded or upheld by the law if he cannot take advantage of them, nor is he likely to suffer any ritual impurity if he is unable to have sexual relations with his wife.[2] On the other hand, it may be argued that the legal husband has acquired rights in his wife by the transfer of cattle to her kin, and if he is unable to enjoy those rights personally, at least he is entitled to dispose of them as he pleases. This at any rate would carry the theory of rights acquired by the transfer of cattle to its logical conclusion, but the Nuer do not look at it in quite this way. We have seen that impotence is recognized as a ground for divorce on the part of the woman, and a man who is impotent has failed in his duties as a husband. In these circumstances he should be pleased that his wife has borne him a child, whoever the father may be. To the Nuer, if he is not pleased, he ought to be.

In cases of this sort a court will sometimes enforce the payment of *yang kule*, though by no means always, but will certainly never allow a claim for the rest of the accepted number of cattle. The concept reflects not so much a definite law as a circumstance which any court

[1] That this rule has been altered by recent legislation will be clear later.

[2] There is, I think, a conscious distinction here. If the husband is impotent and unable to have intercourse with his wife, then there is no risk of the impurity which the *yang kule* is intended to neutralise. If he is able to enjoy sexual intercourse with her, but is sterile and unable to beget children, then the adulterer will still be protected against liability for full compensation (*ruok ciek*), but is liable to pay *yang kule*. The husband, though sterile, still runs the risk of contamination.

8:Howell E, G-5 (1942-1944)1954
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a married woman, without the transfer of cattle, is *kwil nyal*, 'theft of a girl'. The girl will sometimes assume the costume of a married woman (a leather apron or skirt) and, in examining the circumstances of the case, a court will usually ask whether this has happened or not. It is evidence against the wrongdoer, and implies a greater wrong. 684

Riek Nuon v. *Nger Cut* (*Leik: Western Nuer Appeal*)

Nger seduced Riek's daughter. The girl did not become pregnant, but Riek claimed that Nger's attentions were undesirable, and had compromised his daughter's chances of marriage. In considering the case, the court first examined Nger's circumstances, and stated that he should marry the girl. On finding that he had very few cattle and no prospects of more, the court ordered him to pay two head of cattle as *ruok nyal* to Riek. In the course of the discussions it appeared that Nger had several times been warned to keep away from the girl, not only by her family, but by the local headman (*gatuot*), and finally by the chief. For this reason Nger was sentenced to one year's imprisonment, and the sentence was upheld on appeal.

Liep Balou v. *Biel Dang* (*Dok Nuer Case*)

Biel eloped with Liep's sister. He was subsequently arrested by the chief's police and brought before the court. It was found that Biel had no cattle at all and no prospects of obtaining any. The girl was not pregnant, and the court noted that this was a single incident. Elopement is, however, a serious offence, and Biel was sentenced to six months' imprisonment, though no compensation was awarded.

It is doubtful whether the present compensation, which most Nuer tribes say should be a cow-calf and a bull-calf, though some say three head of cattle, has any basis in tradition. It is more probably based on past precedents from the courts and, as we have seen, is not often awarded unless there has been a flagrant attempt to avoid the ritual of marriage and the transfer of bridewealth or the girl was betrothed to some other man at the time.

Sexual Intercourse with an Unmarried Girl resulting in Pregnancy: ruet nyal

It is another matter if the girl gives birth to a child. It is clear that in the past violent action might be taken against a girl's lover by her brothers, who would seek to compel him to marry her. They would seize cattle from his home and, depending again on their relationship in the social structure, and the relative strength of the sanctions for social integration between the communities to which they belonged, the seizure would be accepted and regarded as a preliminary move towards marriage. Resistance might lead to an open battle between them and even to a feud. Hence, within a limited community or tribal segment, there were strong sanctions derived from fear of retaliation which made for amicable settlement of a case of this sort. It was 684 848

8:Howell E, G-5 (1942-1944)1954
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also possible to legitimize a child born in these circumstances by the payment of fees (*ruok gaanke* or *ruok muor*).[1]

Cany Tut v. *Dar Jal* and *Kwol Panyal* (*Lak Nuer Case*)

Dar Jal seduced the sister of Cany Tut. She gave birth to a child and, since Dar refused to marry her or to legitimize the child, Cany took the case to court. The court ordered Dar to pay a cow-calf and a bull-calf as *ruok nyal*. Dar was dissatisfied with this judgement and brought the matter to court again on the grounds that another man, Kwol Panyal, was the father of the child. Judgement was reversed and the cattle were returned to Dar. Cany then demanded *ruok nyal* from Kwol Panyal. The latter countered by proving that the girl was wanton, *nyal me jok*. Court accepted this and refused to enforce payment of *ruok nyal*. This judgement was subsequently confirmed on appeal.

Nguot Reth v. *Mut Roa* (*Gaawar Appeal*)

Mut Roa seduced Nyadeb Reth, an unmarried girl (about nineteen years of age). She conceived and bore a child to him, and the dispute which followed was referred to the court. Mut had insufficient cattle to marry the girl, and was ordered to pay compensation *ruok* (*ruet*) *nyal* consisting of a cow-calf and a bull-calf. The girl was subsequently married to another man, but Mut's cattle were not returned to him. Mut then appealed, not on the grounds that his cattle should be returned to him, but that he had actually paid a full-grown cow in place of the cow-calf ordered by the court. He stated that the traditional scale of compensation in such circumstances was as the court directed, a cow-*calf* and a bull-calf. Court ruled that this was now irrelevant, because had he paid a cow-calf it would by that time be a large cow: it would have grown in the interval.

It is an even more serious offence for a man to return to a girl after he has been made to pay compensation for seducing her. If she has borne one child, her chances of marrying well are not generally lessened. Indeed some Nuer say that her chances are enhanced, for it is thereby proved that she is fertile, and this is a serious consideration to a man contemplating marriage. To return again to the same girl, and particularly to get her with child for the second time, may cause grave loss to her family. A man will be unlikely to look at her as a possible wife if this has happened, and if she gets married at all it will probably be to a man who is poor in cattle and unable to afford a full bridewealth. An offence of this sort is nowadays almost always punished, not only by forcing the guilty party to pay compensation, but by fine or imprisonment as well. Again penal sanctions, previously unknown to the Nuer, are now commonly applied.

Top Bath v. *Manyang Tut* (*Thiang: Central Nuer Appeal*)

Manyang Tut got Nyaluk, unmarried daughter of Top Bath, with child. Manyang refused to marry her, and had insufficient cattle to do so anyway. The court ordered payment of two head of cattle as *ruok nyal*. This was paid. Subsequently Nyaluk ran off to Manyang again and lived with him for a short time, though no child was conceived on this occasion. Court ordered the

[1] See 'Legitimacy of Children', p. 132.

8:Howell E, G-5 (1942-1944)1954
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immediate return of Nyaluk to her family, though no further *ruok nyal* was demanded. Manyang was sentenced to five months' imprisonment.

In this case the court punished the wrongdoer because not only had he committed a serious offence, but he had openly defied the original order of the court.

Compensation (ruok nyal) and Legitimization Fees (ruok gaanke or muor)

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Legitimization fees for children have already been discussed in a separate section.[1] It is worth mentioning here that a man who gets an unmarried girl (*nyal*) with child is not expected to pay both compensation (*ruok nyal*) and legitimization fees (*ruok gaanke* or *muor*) as well. The two payments are in a sense interchangeable. A man who has paid compensation may increase the payment if it is subsequently discovered that the girl is with child, thereby changing it to a recognized fee to legitimize that child. On the other hand, if there is any likelihood of the girl getting married fairly soon after the event, her family may waive their claim to *ruok nyal*, for then the child will go with its mother to her future husband. In some instances even if legitimization fees have been paid they will be returned on the girl's marriage.

Can Cakwen v. *Tutkwac Diu* (*Thiang: Central Nuer Appeal*)

Tutkwac Diu seduced the sister of Can Cakwen, and she gave birth to a child. Tutkwac paid no compensation (*ruok nyal*) for this, and the girl was subsequently married by Buth Jal. Some time later Tutkwac asked to be allowed to pay *ruok gaanke* to legitimize the child to his own name. A dispute arose, and the matter was taken to court. Court ruled that Tutkwac had no right to the child, as the girl's marriage to Buth Jal was by then legally valid. She had performed the ceremony of *muot*, and the child had in fact been born after the marriage.

A man who has paid legitimization fees for his child is not usually able to reclaim them should the child die, as he would be able to do in other circumstances. The legitimization fees become compensation in retrospect.

Lam Twiel v. *Jeh Col* (*Jikany: Western Nuer Appeal*)

Jeh seduced Lam's sister and she gave birth to a male child. Jeh was ordered by the court to pay four head of cattle as legitimization fees (*ruok gaanke*), since he refused to marry the girl. This was in 1944.[2] The child died two years later, and Jeh appealed to the court for return of his cattle. The court ruled that the cattle should not be returned. Jeh had refused to marry the girl though he had cattle with which to do so. The four head of cattle must therefore be considered compensation *ruok* (*ruet*) *nyal*.

[1] See pp. 128–35.

[2] Before the Nuer Chiefs' Council Meeting of 1954, when legitimization fees were standardized (see pp. 134–5).

11:Evans-Pritchard E-5 (1931, 1936) 1945
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587 768 593 milks the cows, and performs other domestic services for her sons. If she is dead and her eldest son is married his wife acts as a cook, housekeeper, and dairy maid, for her husband's brothers and sisters. Unmarried youths are then dependent on the wife of a full brother for daily necessities and if he dies and his wife does not consent to live with one of them they lose not only a sex-mate but also a housekeeper, cook, dairy maid, and gardener. They therefore strongly object to her going to live with a lover outside their village. If they are on good terms with their half brothers they will not resist her desire to live with one of them but will group themselves around the half brother whom she has chosen to live with, and will share his byre and enjoy the services of their dead brother's widow in his homestead. I was told that if they are not on good terms with their half brothers they may object to the widow living with one of them and may tell her that if she refuses to live with a full brother of her husband she had better take a lover outside their kin and bear children to the dead husband by a stranger. Occasionally a widow lives with her husband's sister's son.

The very limited control of brothers over the widow of one of them is seen in domestic facts rather than in legal theory. In fact many Nuer widows do not live with kinsmen of their dead husbands. Among the Eastern Nuer it is hoped and expected that a young widow will consent to live with one of her husband's brothers or sons and her husband's kinsmen try to persuade her to accept this arrangement; but it is rare for them to force her to choose between divorce and leviritic marriage and, if she declares firmly at her husband's mortuary ceremony that she will not live with one of his kinsmen, they permit her to take any lover whom she chooses. She then goes to "Give birth in the bush" (*dieth dor*), as the Nuer say. This means that she either continues to occupy her dead husband's homestead and there cohabit with one of the villagers, or that she leaves the village and goes to live as concubine to a stranger elsewhere. [848] [611] Her husband's people permit her to take this course because all the children she bears are their children, being counted as sons and daughters of her dead husband. Her husband's people have legal rights over the children and may take charge of them in which case the mother, when she is old and past child-bearing, will probably return to her husband's home to be with her grown-up sons. "When a widow who has gone to live with a stranger is old and can bear no more children she will cease to wander and will return to her husband's people and settle there with her children."

Among the Western Nuer the kinsmen of a dead man insist that if his widow has not borne children, or has borne only one child, she must live with one of them. If she refuses they may claim back their bride-cattle [586] i.e. divorce her. If she has borne one child they leave six head of cattle with her parents to retain control of the child and to affiliate him to their lineage. But if she has borne two or more children to her dead husband his people cannot claim back their bride-cattle if she refuses to live with one of his brothers. *Ghok te jokdien ka nath caa ka de lony*, "Cattle which have children on their backs cannot be returned".

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those of a pater towards members of a legal family. It must be emphasized that while the natural family is not a legal family the position of the genitor is socially recognized in a number of ways and that the natural family is often a group of persons living in a common household and cooperating in economic and other domestic undertakings. Widow-concubinage is not a purely biological union nor is the natural family a purely biological group. 587 593

Sometimes a widow elects to live with a clansman of her husband. In this case Nuer speak often of his relationship to the widow as leviritic marriage but this is by courtesy and his legal position is not much better than that of a totally unrelated man would be. I only speak of leviritic marriage, therefore, when it is a brother or son of the dead man who takes his wife.

The simple legal family is not contained in the structure of the natural family in the way it is contained in the structure of ghost-families and leviritic families, and the natural family cannot be regarded as a variation of the legal family, because, whereas in ghost-families and leviritic families the legal representative of the pater is the foster-father, and maybe the physiological father, of the children, in the natural family the legal representative of the pater is not the physiological nor entirely, if at all, the foster-father of the children. In fact, as we shall see later, there may be a struggle between the interests of the natural family and the interests of the legal family, as represented and expressed by the legal representative of the pater.

It will have been seen that the role of a father among the Nuer is often split and different parental functions are performed by different men. The man who was married to the mother of children at the time of their birth we may call the pater or legal father. The man who begot the children we may call the genitor or physiological father. The man who who acts as protector and bread-winner to the household of which the children and their mother form part, and who performs all those intimate services towards the children which are generally associated with the status of father, we may call the foster-father. I refrain from calling the pater the sociological father because all the men who perform these different functions receive social recognition.

When children are born in the union of simple legal marriage the same man is pater, genitor, and foster-father. When children are born in the union of ghost-marriage or in the union of leviritic marriage one man is the pater, and another man is both genitor and foster-father. When children are born of a widow-concubine, the pater is her dead husband, the genitor is her lover, and the part of foster-father is played in early childhood by her lover, or lovers, while in later childhood and in adolescence it is often played by a kinsman of the pater. 611

IV

588
In true marriage, ghost-marriage, leviritic marriage, and widow-concubinage a mother is always legally married and all her children belong in virtue of her marriage to her husband's lineage and clan. But there are 848 611 593

11:Evans-Pritchard E-5 (1931, 1936) 1945
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588 also in Nuerland many children born of unmarried mothers and children
●848 born of an unmarried mother may belong to different social groups, be-
611 cause their physiological fathers have a right to pay a fee of from four to
593 six head of cattle to legitimatize their natural children. The payment of a fee makes the child a member of the genitor's household. The genitor of the child of an unmarried woman is also his foster-father if the man and woman continue to live together. If the woman takes a new lover she goes to live with him and if her child is small she takes it with her. In this case the genitor is one lover and the foster-father is another lover but when the child is older he becomes a member of his genitor's household. A child of an unmarried woman has no pater but his genitor becomes his pater, on payment of a fee (*ruok*). This fee becomes the property of the woman's father and is not divided among her kinsmen as bride-wealth is divided.

Many a Nuer girl finds cohabitation with the husband to whom she has been espoused too painful to continue and if she is stubborn she will provoke a divorce. This may happen a second time with a second husband and her parents finding they are unable to crush their daughter's rebellious spirit let her do as she pleases since constant return of her bride-cattle involves them in trouble and difficulties. Such a girl thereupon cohabits with a man of whom she is fond. If she is restless she may spend a few years with one lover and then a few years with another. She moves from village to village taking her infants with her and bearing children by a number of different men. In every Nuer village where I made enquires I have found one or two unmarried mothers. Nuer call an unmarried mother (*cek ma kea*) and in this paper they are referred to as "unmarried concubines". The child of an unmarried concubine is a *gat keaka*.[1]

588 In some respects the social position of unmarried mothers, and their
[848] children, is not as high as that of wives, and of children born in wedlock. The mothers do not stand so high in public esteem and in a quarrel a man may throw the reproach of bastardy at the child of an unmarried concubine. A man who has begotten a child by an unmarried concubine is seldom eager to legitimatize his union with her by payment of bride-wealth because these women are known to be restless and he expects that she will one day leave him as she has left a previous lover to come and live with him. But they are not treated as of inferior status and their lovers behave towards them as towards wives—in fact they often treat them better than wives for if a man fails to treat his concubine well and to perform those services to her which a man is expected to perform for his wife she will leave his home, whereas a wife is not in a position to depart so easily. One cannot tell who is wife and who is concubine in a household by bare observation of their behaviour and the behaviour of their

[1] In Lou country people often speak of them by the term for the children of widow-concubine, *gaat laka*. In this part of Nuerland the expression *cek ma lak* is seldom used for a widow-concubine. Linguistic differences of this kind are often found in different parts of Nuerland but I have not considered it worth while always to record them.

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husband towards them. One can only know by enquiry. In no way is their behaviour stigmatized as immoral. If a woman prefers to live as a concubine than as a wife that is her affair. Where they are in a worse position than a wife is that they cannot expect the same support from their kinsmen in disputes with their lovers as a wife can expect from her kinsmen in disputes with her husband. What a wife may demand as a right a concubine can only ask as a privilege. This disability is compensated for by the independence they enjoy. They are free to move as they please and to have love affairs whenever and with whomsoever they like. Those unmarried concubines whom I have known personally have been women of strong character who value their independence and do not desire matrimony. They refuse to be bullied by parents or husbands. Indeed Nuer realise that they are temperamentally unfit for normal marriage and consider that they are unlikely to settle down till they are old. 588

The main difference between a widow-concubine and an unmarried concubine is that a widow-concubine has had cattle paid to her kinsmen and these cattle are still "on her back" (*te ghok jokde*), as Nuer say, whereas an unmarried concubine has never had any cattle paid to her kinsmen, save those as a fee to affiliate her children to the lineage of her lovers. If she was once married her bride-cattle have been returned. *Kea e cek me caa ghok luny jok jaude*, "A *kea* is a woman from whose back cattle have been returned". When cattle are paid to make a child of an unmarried concubine the legal child of the man who begot him they are a legitimatization fee and not bride-wealth. The payment neither gives the father control over the mother nor a right to other children that she may bear by him or by any other man. 588 587

Sometimes instead of legitimatizing his child by payment of a fee a man marries the mother and, by payment of bride-wealth, not only legitimatizes the child but also any future children whom she may bear by him or by any other man. A *cek ma kea*, an unmarried concubine, then becomes a *cek pany*, a true wife. When a man marries a concubine he does not pay as many cattle as he would have done had he married her as a maiden. He is said to pay some ten to fifteen beasts instead of from twenty to thirty. 588 583 845

A man only marries a concubine when he is certain that she wishes to remain with him. For sometimes a girl becomes a concubine, not through unwillingness to settle down to married life, but because her parents have forced her to marry a man whom she detests and whom she has provoked to divorce her. A girl may even run away from home in despair when faced with marriage to a man she dislikes, and live with a lover in a different tribe. Some girls are betrayed by youths who have courted them and refused to marry them when pregnant, though, in my experience, this is very rare because a youth is generally glad to marry a girl who is in child by him. In this case the girl becomes a *kea* but she will not remain one, for she will be married to another man who becomes the pater and foster-father of the child though he is not the genitor. Men do not object to marrying young women who have borne a single child but they are unwilling to marry older women who have already borne several children. 588 581

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588 A man is content to pay a fee to obtain possession of any children he may
581 beget by an older woman. Nuer also often speak of a girl who has had a child by a youth who states that he is willing to marry her as soon as he has sufficient cattle, as a *kea*, but no one would refer to her as such once the ritual of marriage has been performed.

588 We may speak of a man, the unmarried woman with whom he lives, and the children born of the woman and begotten and legitimatized by the man as a simple natural family. The family which springs from widow-concubinage is a complex group in that all the members except the widow's mate are members of a different and legal family as well as members of the natural family, for the genitor can never pay a fee to legitimatize his natural children. When a man begets children by an unmarried woman there is no legal family in opposition to the natural family so that the position of genitor in relation to his children is much more secure. Although the woman is not married to the man we cannot deny the word "family" to this group because its members live together as a household on the pattern of the legal family, at any rate for some years. If the woman leaves him the position of the man is equivalent to that of a man whose wife has been divorced and whose bride-cattle have been returned except those left with her kin to legitimatize the children.

V

848 It is clear from what I have already recorded that Nuer do not attach
842 great importance to physiological paternity and that they are far from regarding bastardy with repugnance. Men prefer to beget their own sons but it is not ignominious to nurture children begotten by others. Nuer pay little regard to the manner of begetting so long as the legal parentage of the child is well established. Nevertheless, the links between a genitor and the child he has begotten is not a purely physiological one, even when the genitor is neither pater nor foster-father. The act of begetting creates a social relationship between genitor and natural son and they are bound to one another by a mystical tie. This relationship will be better understood later but it may shortly be illustrated here by a few remarks about adultery (*dhom*).

837 Yet another union which may result in the birth of a child is adulterous congress with a woman during the lifetime of her husband (or of her mate in ghost-marriage or leviritic marriage). Coming from a people (the Azande of the Nile-Congo divide) where adultery cases are very common at the present day, I was at once struck with the absence of cases, quarrelling, and even talk about the subject in Nuerland. Nevertheless, I believe that adultery is frequent both with married women who are travelling a long way from their homes and with women in their husband's villages. Nuer have often described to me how they have committed adultery and were not the least ashamed to talk to me about their adventures. They treat the matter light-heartedly. If you are caught in the act you may be speared or clubbed but if you are not caught in the act you can compensate the injured husband. They do not speak of adultery as though it was a highly immoral act but only as a risky and possibly expen-

11:Evans-Pritchard E-5 (1931, 1936) 1945
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sive act. If they have begotten children by the wives of other men they are rather proud of this evidence of their virility.

The legal position about adultery is as follows: If a man finds another committing adultery with his wife they will probably fight, though the adulterer will escape if he can because he does not wish to add homicide to adultery. But often enough either the husband does not know that adultery has been committed or cannot catch the adulterer in the act. If the husband is unfertile or impotent he may pretend that he is unaware of his wife's infidelity because, while he desires children, he does not wish people to think that he is condoning adultery. However, a young man is not likely to take this line. A Nuer said: "An impotent man (*luc*) who is young does not think of children but of his rights. When he is old he thinks of children and is willing that his wife should give birth in the bush (by a stranger)". Sometimes a man knows that a neighbour is committing adultery with his wife but is afraid that if he fight him he will be injured. If a man is ignorant of his wife's infidelity and she bears him no ill-will she may tell him about it because it is considered dangerous for a husband to sleep with his wife on the skin where she has committed adultery.

When a husband has proof of his wife's infidelity he may claim compensation of six cows and, as the adulterer's kin are unlikely to support him on a charge of this kind, the husband will probably receive the cattle. But if later a healthy child of the adulterous congress is born five of these cows must be returned, because "The cattle and the child must not meet in one place". The cattle paid in compensation are thought to give the genitor a claim on the child for they then partake of the nature of a legitimatization fee. The payment by the adulterer would be changed by the birth of a child from compensation (*ruɔk*) for adultery to a fee (*ruok*) for the child. I was unaware of this fact when I lived among the Eastern Nuer and it may be restricted to the Western Nuer. I am uncertain whether even among the Western Nuer the cattle are invariably returned but it is believed that if they are not returned the child may die and his ghost haunt his pater.

The cow that remains in the husband's kraal is called *yang kula*. The payment renders innocuous the action of the husband in having relations with his wife on the same skin on which she had relations in adultery. In most of the cases of adultery mentioned in this paper either the cattle were returned on the birth of a child or they were never paid, for often when the husband is old he does not claim compensation.

Among the Western Nuer when it is well known that a girl is a bastard begotten of a certain man, the genitor will sometimes claim "the cow ot begetting" on her marriage. Her kin do not relish handing him over a cow but they often do so because there is a mystical link between father and daughter and if he does not receive a cow of her bride-wealth he may curse her so that she may not bear children or so that her children will die and haunt their pater. The husband's people are therefore anxious that a cow shall be paid that their wife may be fruitful.

The verb *ruok* is used to describe the paying of compensation. Thus one says *Ca ghok Galuak rok ka dhom cek Yang*, "The cattle of Galuak

11:Evans-Pritchard E-5 (1931, 1936) 1945
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587 Karlual ♂ then married
592 Nyaweny ♀—Kong ♂ who is also dead. She bore him Tang ♂ and Gai ♂. Lately he has married Nyariek ♀—Cang ♂ by whom he has an unweaned child. He has an unmarried concubine who was temporarily absent during my visit. She has borne him two sons, Twong ♂ and Kong ♂. Cattle have been paid to legitimatize Twong ♂ and more cattle will be paid to legitimatize Kong ♂.

Karlual's brother, Panyuan, lives in his byre, and his sister's sons, Nhial ♂—Rainen ♂ and Galuak ♂—Rainen ♂, spend most of their time there and house some of their cattle there.

592 736 *Homestead No. X.* Meat ♂—Col ♂. He is unmarried. In his byre lives his half-brother, Wec ♂—Jany ♂, who has married a wife to the name of one of his father's brothers. She has borne him Korwai ♂ (dead), Nhial ♂, Nyajuacni ♀, and Nyapuot ♀. As he has no cattle, he has sold his byre to Col ♀ of Homestead No. II, and as he is too lazy to cultivate a garden, his wife and family, to save themselves from starvation, live at her sister's home in another village. He wanders hither and thither and scrounges on other people. Another occupant of this byre is Meat's sister's son, Bilieu ♂—Lam ♂.

592 607 *Homestead No. XI.* Jal ♂—Ngunjuk (brother of Col of homestead No. II). The two brothers live at a distance because their wives do not get on well together. His brother, Bol ♂, and his half-brother, Pan ♂, share his byre. Both are unmarried. Jal ♂ has married a wife to the name of his father's brother, Muong ♂—Ret ♂. This woman, Nyaluak ♀—Deng ♂ has bore him Cuong ♂ and Nyalia ♀. One of the huts in this homestead belonged to Jal's mother who died last year. See Diagram No. VII.

592 588 *Homestead No. XII.* Nyawal ♀—Col ♂. Her husband was Lam ♂ of the Ngwol clan. She bore him Rwac ♂ (dead) and Nyakwoli ♀. After his death she cohabited with Juan ♂ of the Jikul clan, by whom she bore Bilieu ♂, Nyakuan ♀, Nyalieth ♀, Ghuth ♂, Bathu ♀, and Nyalita ♀. She is past child-bearing and does not cohabit with any man. Her cattle are housed in the byre of her brother Meat ♂, of Homestead No. X.

592 588 [775] *Homestead No. XIII.* Nyading ♀—Kulang ♂. Her daughter, Nyamani ♀, was married by Tang ♂—Karlual ♂ to the name of Ran ♂, a brother of his father (though begotten by Kwenwar while Karlual ♂ was begotten by Jany ♂). Ran ♂ had died before initiation and his ghost began to kill Karlual's wives and children and had to be quieted by being married a wife. Nyamani ♀ lives with her mother, Nyading ♀, whose husband, Dak ♂—Jiong ♂, is dead. She bore Dak ♂ three children: Nyamani ♀, Nyaghok ♀, and Gai ♂. Dak ♂ by another wife begat Nyajaani ♀ who also lives in this homestead. Nyajaani ♀ was married by Pathol ♂—Nyaalbor ♂ of the Lual section and bore him a blind son who also lives here. She refused to live with her husband's brother when he died, so the cattle of her bride-wealth were returned. She was then married to another man and divorced by him. She now cohabits with Mokwac ♂ of Homestead No. XVI and has borne him a son. [587]

Homestead No. XIV. Loc ♂—Jany ♂. He married a wife, Can ♀—Giling ♂ of the Reng section of the Jikany tribe, to the name of his dead

families; it is only in question of descent and inheritance that the difference is seen. It is the dead pater's name which will survive in genealogies. 588 [611]

Ghost marriages are arranged on behalf of brother, paternal uncles, maternal uncles and fathers (i.e. physiological fathers who are not also paters). A man of a senior generation is not allowed to marry a wife to the name of a kinsman of a junior generation because the man would be both vicarious husband to the woman and her father-in-law. A man never marries a woman to the name of his father's father or his mother's father since that was the duty of their sons. Only a kinsman takes a wife to the name of a dead man. Occasionally a woman marries someone to the name of a dead kinsman, and the wife so married would cohabit with a stranger to raise up children for the ghost.(1)

2. *The Levirate.* When a husband dies, the children his wife may subsequently bear are still counted as the children of the dead man. It is held that the woman should live with one of the dead man's brothers for she was married with the cattle of their kraal. Whoever inherits the widow does not marry her; she is still the wife of the dead man, and the man with whom she lives merely acts as genitor. Children born of the union regard themselves as their pater's family and inherit from him and not from their genitor. Leviratic marriage is different from ghost marriage. In ghost marriage bridewealth is paid and the marriage rites are performed by the vicarious husband; in leviratic marriage the husband has already performed these actions and the brother or other male kinsman inheriting the widow merely enters, as pro-husband, a family already in being.(2) 587 611

Tradition, threat of divorce and social pressure, all persuade a young widow to live with her husband's brother or with a son by a co-wife. She has a certain amount of choice among the relatives available. If she prefers to go and live with lovers and to 'give birth in the bush', all children born are counted as those of her dead husband, and his lineage has legal rights over them. Some widows return to their parents' village and live with a man there.

3. *Widow Concubinage.* A widow living with a stranger after the death of her husband, is called a *cek na lak* (widow concubine).(3) Her lover has no legal rights over her and cannot compel her to stay with him, nor has he any legal control over children born of the union. A man, a widow concubine and their children form a natural, as opposed to a legal, family, and the position of the genitor, though precarious, is acknowledged socially in several ways. 587

4. *Unmarried Concubinage.* A child of an unmarried woman has no pater but his genitor may become his pater on payment of a fee of 4 to 6 cattle to legitimise him. If the fee is not paid, the child belongs to the mother's lineage, and any man whom the mother cares to live with for the time being is regarded as his foster father. In certain respects the status 848 [611] 000

(1) Evans-Pritchard, "Some aspects of marriage and the family among the Nuer", 1930, p.318.
(2) Evans-Pritchard, *op.cit.*, 1938, p.320.
(3) *Ibid.*, p.325.

In certain respects the status
588 of an unmarried mother is inferior to that of the mother for whom bride-wealth has been paid,(1) but her position may be regularised at any time by payment of cattle to her lineage.

582 The rules of exogamy apply to simple legal marriages and to all other
848 unions. Physiological paternity does not appear to be stressed by the Nuer, but what is important to them is that the legal parentage of a child should be well established. The various types of union practised give rise to various difficulties owing to the clash of interests which may occur when the legal pater of a child is not his genitor, or his foster father. These difficulties are least likely to arise in the simple legal family where sentiment and interests go together and inheritance is plain.

837 Adultery is not uncommon and, if it can be proved, the adulterer has to pay a fine of 6 cattle to the husband, except when a child has been born, for it seems that the adulterer has a claim on the child. If a man is caught in the act, he may be speared or clubbed.

BRIDEWEALTH

583 Instalments of the bridewealth are handed over by the bridegroom's family to that of the bride, *pari passu* with a series of ceremonial acts, until the union is completed by the birth of a child.

The ideal amount of bridewealth consists of 40 head of cattle, and of these 20 go to the father's side of the bride's family and 20 to the mother's side. The actual distribution in any particular marriage approximates as nearly as possible to the ideal distribution.(2)

The number of animals actually handed over is usually less than 40, but in all cases there is a minimum number without which marriage could not take place. Essential claims are settled at the first bridewealth discussion; those due to the maternal relatives have priority, as they represent a deferred payment standing over from the marriage of the bride's mother. Lengthy arguments take place over the remainder of the animals. Paternal and other kinsmen, whose relationship is not close enough to carry a title to a defined share of the bridewealth, may claim a small gift; the genitor of the bride has a right to a cow if he is not also her legal father.

Bridewealth has two main functions: in the first place it creates new social ties between persons and regulates their relations until these have become assimilated to kinship patterns; secondly, it determines the lineage affiliations of the children of the union.(3)

MARRIAGE CEREMONIES

584 A number of rites are necessary for the conclusion of a marriage, and the sequence of rites is linked with the transfer of cattle; thus, the performance of a given ritual is a recognition that the required number of

(1) Evans-Pritchard, "Some aspects of marriage and the family among the Nuer", 1938, p.329.
(2) Evans-Pritchard, *Africa*, XVI, 1946, p.249.
(3) Evans-Pritchard, *African Studies*, XI.4, 1947, p.185.